

EBENEZER COOLEY.

JANUARY 15, 1830.

Read, and laid upon the table.

JANUARY 4, 1832.

Printed by order of the House of Representatives.

The Committee on the Public Lands, on the petition of Ebenezer Cooley,

REPORT:

The Committee on the Public Lands, to which was referred the memorial of Ebenezer Cooley, with the accompanying documents, report:

That on the 3d day of November, 1762, Louisiana was ceded by France to Spain, and possession given thereof, by an order of the King of France, bearing date the 21st of April, 1764. In the year 1767, Joseph Bourgeat took possession of a tract of land at the mouth of the Bayou Latanache, on the Mississippi, and resided thereon with his family, until the year 1774. During his residence on the land, he cleared and cultivated about twenty-five acres of it, which, when he removed, he left in the possession of a tenant by the name of Jean, who resided on the land until 1779, when he was compelled to leave it in consequence of the unusual rise of the waters of the Mississippi in the Spring of that year. The possession and improvement of the land, is proved by three witnesses, to wit: Francois Grammillon, Simon Craizel, and Baptiste Lafleur. Two of them speak of the land being *granted* to Bourgeat, and Lafleur says he believes by Duplessis, commandant, and Ricard, judge. There is no evidence, other than the testimony of these witnesses, offered in support of the claim, and they are silent as to its boundaries and extent.

On the 1st of October, 1800, the Spanish Government agreed to retrocede Louisiana to France; and on the 21st of October, 1803, France ceded it to the United States. By the third article of the treaty, the United States agreed that the inhabitants of the ceded territory should be protected in the free enjoyment of their liberty and property.

After Jean removed from the land, in 1779, it remained unoccupied, until after the year 1806. A new growth of timber had sprung up, and, in point of fact, it had again become a part of the forest. No written evidence of transactions, anterior to the cession in 1803, has been proffered to the committee, and no excuse is assigned for its absence; from which the committee infer that no written grant was ever made to Bourgeat, and that the claim rests upon a naked possession, commenced and ended within the periods be-

fore specified. All the ordinances for the granting of land under the Spanish Government of Louisiana, so far as they have come under the observation of the committee, require of the settler to make certain improvements within a limited time, to entitle him to the right of soil. In this case, there is no proof of a compliance with these ordinances by Bourgeat; and, from the total abandonment of the property for twenty-four years before the cession of the country to the United States, the committee believe that he forfeited all claim to the land, if any he ever had; and that it was not his intention, nor the intentions of his family, after his decease, at any time before the treaty of 1803, to resume the possession of the land.

In the year 1788, Joseph Bourgeat departed this life, leaving a will, in which nothing is said about this land. In April, 1806, his wife, to whom he willed his property, transferred to Ebenezer Cooley, by deed, as he claims, the tract of land lying at the mouth of the Bayou Latanache. Cooley applied to the Board of Commissioners, appointed for the purpose of ascertaining the rights of persons claiming lands under French or Spanish grants in Louisiana; and in their record, the land is described as lying in the county of Point Coupee, on the west side of the river Mississippi, containing twenty arpens in front, viz: ten arpens on each side the Bayou Lattanache, with the depth of forty arpens, *and bounded on each side by vacant land*. The commissioners rejected the claim, upon the ground of the length of time it had been abandoned; and also upon the ground, that it was unwarranted by any law, usage, or custom, of the Spanish Government.

On the 8th day of December, 1806, the widow of Joseph Bourgeat sold and conveyed another tract of land, for the consideration of \$300, to the said Cooley, called the Cypress swamp, beginning ten arpens above the Bayou Latanache, on the Mississippi, *adjoining* the land *first* sold to him, thence up the Mississippi twenty-five arpens, or thereabouts, with double concession. This deed was acknowledged before Julien Poydrass, judge of the county court of Point Coupee, who certified that the grantor had *held, occupied, and enjoyed*, peaceable possession of the land mentioned in the deed, for more than twenty-five years, to his knowledge. In giving this certificate, the judge was clearly mistaken, as he admits by his written and attested acknowledgment, bearing date the 19th October, 1817, in which he says it was his intention to certify *only*, that Doctor Bourgeat did formerly settle at the mouth of the Bayou Latanache, but he could, *by no means, pretend* to certify the quantity he then occupied, or *intended* to occupy.

It is proved by one witness, Doctor John Towles, that he was at the mouth of the Bayou Latanache in 1806, at which time there was no appearance of any settlement having existed there for a number of years back; and that, from the appearance of the timber, he was convinced it had not been cultivated for at least *thirty* years. He also states that he was acquainted with the purchase made by Doctor Cooley, which consisted of ten arpens above, and ten arpens below the Bayou, which was the full extent of the claim of that family; and that he was perfectly convinced Cooley did not intend, originally, to exhibit a claim for a greater quantity of land. With respect to the adjoining land, the witness is *positive* that the claim of Cooley is *fictitious*. He further states, that he purchased a part of the land, and, discovering the futility of Cooley's claim, he compelled him to give up the contract. He also states that he understood that the land at the mouth of the Bayou, had been abandoned by the family since 1779, and was only resumed by Doctor Cooley in consequence of its enhanced value by the change of the government.

Another witness, Col. Bartlet Collins, states that he commenced his settlement in the neighborhood of the Bayou, in 1807, and remained there seven years, and always understood that the extent of Bourgeat's claim was ten arpens above and ten below the Bayou.

George D. Passan, in his deposition, states, that in the year 1809-10, he saw the land at the mouth of the Bayou, and that nine or ten arpens front, on the Mississippi, by about two or three arpens back, containing about 25 arpens, was covered by a small growth of trees, which indicated that it had been formerly cleared; and, with the exception of about 60 arpens cleared by Doctor Fowles, and about 150 cleared by the witness, all the land between the Bayous Latanache and Moran, which includes all the Cypress swamp tract, and a part of the first tract, was unimproved.

Some idea may be formed of the value of these lands, from the sales made by Doctor Cooley. On the 8th day of January, 1809, he sold 10 arpens front, and the whole depth back, for \$3,500, to Geo. D. Passan, being a part of the Cypress swamp tract.

On the 24th May, 1811, he sold the tract at the mouth of the Bayou, to J. Gray, for \$15,000, which left unsold about fifteen arpens front, of the Cypress swamp tract.

The committee are of opinion, from the testimony of these witnesses, and from the fact that the land at the mouth of the Bayou, in the claim made to the commissioners, is described as being bounded by *vacant land*, that neither Bourgeat nor his family asserted any claim to the Cypress swamp tract, before the treaty; and they are compelled to view the claim now set up, in the most unfavorable point of light.

Possessed of the first certificate of Judge Poydrass, which he (Cooley) might have known was incorrect, he again applied to the commissioners to confirm his title to a tract of land situated in the county of Point Coupee, on the west bank of the Mississippi, containing 2,084 arpens, bounded on the upper side by C. Treme, and on the lower side by vacant land, which he purchased of Mrs. Bourgeat. This tract embraces the Cypress swamp, and the land at the mouth of the Bayou, for which the commissioners rejected his claim. The commissioners, on the 23d day of March, 1816, confirmed the claim for 2,000 arpens of this land, which was approved by an act of Congress of the 11th May, 1820. In this act of confirmation, the commissioners were unquestionably misled by the certificate of Judge Poydrass, which they incorporated in their record, and without which they never could have allowed the claim.

Other than the improvements made by Dr. Towles and De Passan, there is no proof before the committee, at what time the other improvements were made, nor is there any evidence at what time the petitioner took possession of the lands. The whole improvements are estimated at about 450 arpens, and the lands, with the improvements, are proved to be worth twenty-five dollars per arpent—equal to the sum of \$50,000.

By an act of Congress of the 3d of March, 1803, the Secretary of War was authorized to issue land warrants to Major General Lafayette, for 11,520 acres of land. By an act of the 27th of March, 1804, he was permitted to locate his warrants on any land the property of the United States, in the territory of Orleans. By an act of the 2d of March, 1805, he was required to make his locations with the Register of the land office, created by that act; the surveys thereof were to be executed under the authority of the

surveyor of the United States south of Tennessee, and a patent or patents were to be issued therefor, on presenting such surveys to the Secretary of the Treasury, together with the certificate of the Register, that the land was not rightfully claimed by any other person. There was a further provision in the act, that the surveys should not contain less than 1000 acres, and should not include any improved lands or lots, salt spring, or lead mine.

Two locations were made by General Lafayette, of 1000 acres each, which included the lands claimed by Dr. Cooley; one of these locations was made on the 1st of July, 1810, and the other, on the 25th of May of the same year. To these surveys, the certificates required by law were attached. The surveyor, in his certificate, states that the surveys included no improvements but Cooley's, which were rejected; and the Register certified, that the lands located were not rightfully claimed by any other person. On these surveys, patents were issued on the 25th March, 1813, to General Lafayette.

In 1812, he sold these tracts of land to Henry Seymon, who instituted a suit against Cooley, in which, in the year 1825, he succeeded in recovering the lands.

In giving their opinion in the above suit, the court pronounced both of the deeds from Mrs. Bourgeat, to Cooley, to be void, in consequence of their not being executed in conformity to the laws of Louisiana.

From this view of the subject, the committee are satisfied, that neither Joseph Bourgeat, nor his representatives, had any right to the lands mentioned in the memorial of the petitioner, at the time of the acquisition of Louisiana by the United States; and they are also satisfied that the commissioners, in confirming the title, were induced so to do, from evidence which the petitioner might have known to be incorrect when it was laid before them. The committee are of opinion, that the petitioner is not entitled to the relief he prays, and submit, for the approbation of the House, the following resolution:

Resolved, That the Committee on the Public Lands be discharged from the further consideration of the petition of Ebenezer Cooley.